

**Before the
New Hampshire Real Estate Commission
Concord, New Hampshire 03301**

In The Matter Of: **Docket No.: 2012-027**
New Hampshire Real Estate Commission v. Kevin M. Sullivan
Re: Complaint of Phillip Maiorano
License No.: 064427
(Adjudicatory/Disciplinary Proceeding)

FINAL DECISION AND ORDER

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of Kevin M. Sullivan ("Respondent" or "Mr. Sullivan") in Docket Number 2012-027.

Background Information:

Respondent Kevin Sullivan was the listing agent for commercial property owned by Philip Maiorano. Philip Maiorano submitted a complaint with the Commission against the Respondent on August 8, 2012 accusing Respondent of disclosing confidential information to a potential buyer, and submitted a written letter by the prospective buyer's business associate about the personal information disclosed to her about Mr. Maiorano by the Respondent. Subsequent to an investigation, on June 24, 2013, the Commission issued a Notice of Hearing for a hearing scheduled for July 16, 2013.

On Tuesday, July 16, 2013, at 1:30 p.m., the Commission commenced the adjudicatory/disciplinary hearing in the above captioned matter. Commission members present¹ were:

David C. Dunn, Commissioner, Presiding Officer
Daniel S. Jones, Commissioner
Paul A. Lipnick, Commissioner
James R. Therrien, Commissioner

The prosecution was conducted by Ann Flanagan, the Commission's Investigator. Mr. Sullivan was pro se.

The following exhibits were introduced into evidence and accepted into the record:

¹ These same Commission members also deliberated and voted on this Final Decision and Order.

- Complainant Investigator Flanagan's Exhibits:
Exhibit #1 - Complaint File 2013-006: pages 1-26.
Exhibit #2 – Exclusive Right to Sell Agreement, pages 1-3
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- The Respondent's exhibits: none were introduced.

The following witnesses were present to testify at the hearing:

Donna Hollenbeck

Amber Flanders

Warren Clement

Philip Maiorano

Findings of Fact:

In light of the testimony and exhibits, the Commission finds the following facts:

1. Respondent was first issued a license as a real estate salesperson from the Commission on September 28, 2007. At the time of the allegations, Respondent was licensed as a real salesperson, license #064427, in active status with a license period of September 28, 2011 – September 28, 2013. Respondent's current license expires on September 28, 2015.
2. On August 8, 2012, Philip Maiorano filed a complaint, Complaint File No. 2012-027, against Respondent for disclosing personal information about Mr. Maiorano ("the seller") that was defamatory to the seller to the prospective buyers, and that Respondent appeared to be discouraging the prospective buyers from purchasing the property (Ex. 1, pg. 8).
3. Mr. Maiorano submitted a letter from Donna Hollenbeck as part of his complaint that stated that Ms. Hollenbeck contacted Kevin Sullivan of Weeks Commercial Real Estate to schedule a showing for 36 Country Club Road, Unit 92F in Gilford, NH which is was owned by Philip Maiorano on June 7, 2012. Ms. Hollenbeck stated in the letter that she contacted Respondent to arrange a

showing of the property for Amber Flanders, Melissa Morrison and herself. Ms. Hollenbeck stated that the Respondent was hesitant to show the property, stating that the property does not show well, and began to disclose personal information about the seller, that he is a pulmonologist who lost his medical license and that he had some sort of mental breakdown or something, and that he was going through a divorce and that Mr. Sullivan was dealing with his wife. Ms. Hollenbeck stated in her letter that the Respondent said that he was unavailable to show the property on the date that the prospective buyers wanted to view the property and stated that his associate, Warren Clement could show the unit to them. The Respondent called Amber Flanders to confirm that they could see the property on June 8, 2012 with Mr. Clement (Ex. 1, pg. 10).

4. The Respondent stated the following in his reply (Form No. 11-A) to Complaint File No. 2012-027: (Ex. 1, pages 16-17)

The timing of the request from Ms. Hollenbeck to show the property happened when Mr. Maiorano had many personal events unfolding, none of which were stated as confidential.

Mr. Maiorano's wife, Nancy Maiorano (also named as owner on the deed) contacted Respondent and informed him that Mr. Maiorano was no longer living at the house and that she filed for divorce.

Mr. Maiorano contacted Respondent to let him know that he had been thrown out of the house and was living at a local hotel. Mr. Maiorano informed the Respondent that there was a court order in place prohibiting him from all contact with family, and was not permitted to go in the Town of Gilford, and that he no longer had a cell phone or computer, but the Respondent could contact him at the hotel.

Respondent received a call from the Gilford Police asking if Nancy Maiorano was listed on the deed of the property, and was asked if there were firearms in the unit. Respondent stated that he did not see any firearms in the unit.

Respondent stated that he did tell Ms. Hollenbeck that Mr. Maiorano was a pulmonologist, who had lost his privileges at Lakes Region General Hospital, but

did not state that Mr. Maiorano lost his license.

Respondent stated that Mr. Maiorano was living at a local hotel and that he was dealing with his wife on the property, but did not state Mr. Maiorano had a mental breakdown.

5. Respondent included an article published in the The Citizen of Laconia regarding the suspension of Mr. Maiorano medical license by the NH Board of Medicine and Gilford Police logs published in the The Citizen regarding Mr. Maiorano's violations of protective orders. (Ex. 1, pages 20-23)

6. Donna Hollenbeck ("Ms. Hollenbeck") testified that she had a real estate license in the past, but let it expire. Ms. Hollenbeck's primary occupation is a licensed massage therapist.

7. Ms. Hollenbeck testified that she contacted Kevin Sullivan of Weeks Commercial Realty who was the listing agent for the seller, Philip Maiorano, in June 2012 to schedule a showing for Ms. Hollenbeck and her business associate Amber Flanders to see the commercial property owned by Mr. Maiorano.

8. Ms. Hollenbeck stated that when she contacted the Respondent to set up a showing, she requested a certain date and time, because there were three persons attending this showing and it was hard to set a date and time that all three could meet for the showing. The Respondent informed Ms. Hollenbeck that he was unavailable at the time they wanted to view the property. Ms. Hollenbeck stated that she asked the Respondent if there was someone who could show the property to them. She stated that the Respondent seemed hesitant but said that there was someone who could show the property to them. Ms. Hollenbeck stated that Respondent stated that the property didn't show well and that some of Mr. Maiorano's belongings were still at the property, and then he began to tell personal information about the Mr. Maiorano. She stated that Respondent said that Mr. Maiorano was a doctor who lost his medical license; that he had some sort of mental breakdown; that he was going through a divorce; and that Respondent had to deal with Mr. Maiorano's wife as well. Ms. Hollenbeck stated that she was very uncomfortable with the things that

Respondent stated about Mr. Maiorano, and stopped the conversation and asked to schedule the showing. Respondent scheduled the showing for the following day with Warren Clement.

9. Amber Flanders ("Ms. Flanders") testified that she was a massage therapist and was an associate with Ms. Hollenbeck and another colleague, and they were looking for another space for their business. Ms. Flanders stated that she never spoke with the Respondent and that Ms. Hollenbeck spoke with the Respondent and set up the showing with Warren Clement. Ms. Flanders explained that Mr. Clement stated that the unit was not in good shape prior to entering the property, and only spoke about the property, not about the seller, Mr. Maiorano.

10. Warren Clement ("Mr. Clement") testified that he had never been in the property prior to the showing with Ms. Hollenbeck, Ms. Flanders and their associate. Mr. Clement stated that he went in the unit prior to the showing to put the lights on and informed the three of them that the unit was very cluttered and to be careful because some of the lights didn't work. Mr. Clement stated that he did not have any knowledge of any personal information about Mr. Maiorano, and that Mr. Sullivan did not inform him of any personal information about Mr. Maiorano.

11. Respondent testified that he informed Ms. Hollenbeck of Mr. Maiorano's personal information that he stated in his reply to the complaint, because he felt that he needed to provide information on Mr. Maiorano's personal events in order to get by the negativity of the condition of the property.

12. Respondent testified that he understood that a client's marital status is confidential information. Respondent admitted that he should not have brought up Mr. Maiorano's divorce to the prospective buyers and had no right to talk about his divorce.

13. Philip Maiorano testified at the hearing that he felt betrayed when he found out that Mr. Sullivan, as his listing agent, disclosed personal information about him to the prospective buyers that he considered to be confidential, and the some of the personal information conveyed was not true. Mr. Maiorano stated that he never lost his privileges at the hospital, and that he resigned in 2001. Mr. Maiorano stated that he continued to work in his practice in various areas around the

state, but voluntarily withdrew from the practice of medicine in 2010, and in April or May of 2012 his medical license was suspended. Mr. Maiorano stated that he would not have wanted the Respondent to disclose this information. Mr. Maiorano stated that the Respondent placed him at a disadvantage as a seller with the prospective buyers by conveying personal confidential information, and is desperate to sell the property, because it has put him into bankruptcy.

14. Complainant Investigator Flanagan testified that Respondent admits in his reply to the Complaint that he stated to the prospective buyers that Mr. Maiorano lost his medical privileges at the Lakes Region General Hospital; was living at a hotel; and had marital issues. Investigator Flanagan stated that even if some of the personal information about Mr. Maiorano was made public through the media, it does not mean that you offer this information to the prospective buyers.

Relevant Law:

RSA 331-A:1 Purpose. It is the policy of this state to regulate the practice of real estate brokers and salespersons in order to ensure that they meet and maintain minimum standards which promote public understanding and confidence in the business of real estate brokerage.

RSA 331-A:25 Seller Agent; Duties.

I. A license engaged by a seller or landlord shall:

(b) Promote the interests of the seller or landlord including:

(5) Informing the seller or landlord of the laws and rules regarding real estate condition disclosures.

(c) Preserve confidential information received from the seller or landlord that is acquired during a brokerage agreement. This obligation continues beyond the termination, expiration, completion, or performance of the fiduciary relationship. Confidentiality shall be maintained unless:

(1) The seller or landlord to whom the information pertains grants written consent to disclose the information;

(2) The information is made public from a source other than the licensee;

(3) Disclosure is necessary to defend the licensee against an accusation of wrongful conduct in a judicial proceeding before a court of competent jurisdiction, the commission, or before a professional committee; or

(4) If otherwise required by law.

RSA 331-A:25-a Licensees; Scope of Agency; Interpretation.

I. A licensee who provides services through a brokerage agreement for a seller, landlord, buyer, or tenant is bound by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting.

RSA 331-A:26, Prohibited Conduct. – The following acts, conduct or practices are prohibited, and any licensee found guilty after a hearing shall be subject to disciplinary action as provided in RSA 331-A:28:

XXIX. – Unprofessional conduct defined in RSA 331-A:2, XV.

Rulings of Law:

The Commission makes the following findings by a preponderance of the evidence:

1. The Respondent as the seller agent for Philip Maiorano breached his fiduciary duty of confidentiality to his client by disclosing confidential information about Mr. Maiorano's marital status, the loss of his medical privileges at the hospital, and that he was living in a hotel, in violation of RSA 331-A:25-a, I; RSA 331-A:25-b, I (b), (5), (c); and RSA 331-A:26, XXIX. (Notice of Hearing, paragraph 5).

Disciplinary Action:

Based upon the Findings of Facts and Rulings of Law above, the Commission has voted to order the following:

IT IS ORDERED that the Respondent pay a disciplinary fine in the amount of two thousand dollars (\$2,000) to the NH Real Estate Commission, payable to the Treasurer State of New Hampshire within ninety (90) days of the effective date of this Order.

IT IS FURTHER ORDERED that the Respondent must meaningfully complete and show proof of full attendance at a New Hampshire Real Estate Commission accredited 3-hour continuing education course about Agency by submitting to the Commission an affidavit of the completed course (this continuing education course is to be completed by classroom delivery method only and is not to be counted towards Respondent's continuing education requirements for renewal of license) within ninety (90) days of the effective date of this Order.

IT IS FURTHER ORDERED that failure to comply with this disciplinary Order will result in the suspension of Respondent's real estate license until the fine is paid and the course is completed.

IT IS FURTHER ORDERED that the Respondent's failure to comply with any terms or conditions imposed by this Final Decision and Order shall constitute unprofessional conduct pursuant to RSA 331-

A:26, XXIX, and a separate and sufficient basis for further disciplinary action by the Commission against the Respondent.

IT IS FURTHER ORDERED that this Final Decision and Order shall become a permanent part of the Respondent's disciplinary file, which is maintained by the Commission as a public document.

IT IS FURTHER ORDERED that if this decision is not appealed within 30 days of the effective date, it shall become final. See RSA 331-A:28, III ("The action of the commission in revoking, suspending, or denying a license or accreditation, or levying a fine, shall be subject to appeal to the superior court at the instance of the licensee or an accredited individual, institution, or organization, within 30 days after the filing of the commission's decision...").


IT IS FURTHER ORDERED that this Final Decision and Order shall take effect as an Order of the Commission on the date the Commission signs it.



David C. Dunn, Presiding Officer

11/19/2013

Date



Daniel S. Jones, Commissioner

11/19/13

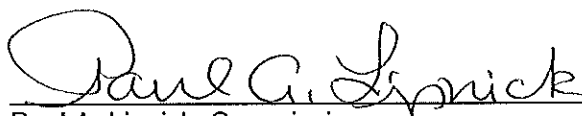
Date



James R. Therrien, Commissioner

11/19/2013

Date



Paul A. Lipnick, Commissioner

Nov. 19-2013

Date

*\ William E. Barry, Commission member, (case evaluator) recused.